

AWARD
NASD Regulation, Inc.

In the matter of the Arbitration Between

Name of Claimant(s)

Network Capital Corporation

Arbitration
No. 98-00466

Name of Respondent(s)

Wilson-Davis & Company, Inc.

REPRESENTATION

For Claimant: Harold G. Christensen, Esq., Snow, Christensen & Martineau, Salt Lake City, Utah

For Respondent: David R. King, Esq., Kruse, Landa & Maycock, L.L.C., Salt Lake City, Utah

CASE INFORMATION

Statement of Claim filed: February 5, 1998

Claimant's Reply to Counterclaim filed: May 15, 1998

Claimant's Pre-Hearing Memorandum filed: April 9, 1999

Claimant's Submission Agreement signed: February 5, 1998

Statement of Answer and Counterclaim filed by Respondent: April 28, 1998

Respondent's Trial Brief filed: April 9, 1999

Respondent's Submission Agreement signed: April 27, 1998

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

November 9, 1998 (one session)

Hearing Date(s)/Session(s): April 19, 1999 (two sessions)
April 20, 1999 (two sessions)
May 12, 1999 (one session)

Hearing Location: Salt Lake City, Utah

CASE SUMMARY

Claimant Network Capital Corporation (Network) alleged that Respondent Wilson-Davis & Company, Inc. (Wilson-Davis) expressly agreed to clear a new issue that Network was underwriting, and then breached the agreement by refusing to clear trades when tickets were presented to it. Claimant further alleged that Network had the ability to control the time the offering became effective and began to trade, and thus had the ability to delay the effective date of the offering in order to find another clearing agent. Claimant further alleged that Network relied on Wilson-Davis' agreement that it would clear the offering and allowed the offering to become effective. Claimant further alleged that after the offering became effective and began to trade, Wilson-Davis refused to clear the trades and further alleged that as a result of Wilson-Davis' breach of contract, Network suffered direct damages of \$317,794 and consequential damages of at least \$680,863.

Respondent Wilson-Davis denied any liability to Claimant Network with respect to the Vetco, Inc. underwriting transaction. Wilson-Davis alleged that it had the absolute right to refuse to clear any transactions for Network or anyone else related to the Vetco, Inc. underwriting. Wilson-Davis further alleged that the position taken in this arbitration by Network that Wilson-Davis led Network to believe that Wilson-Davis would clear the underwriting is totally contrary to common sense and simply is not true and further alleged that Network should be denied any recovery on its Statement of Claim.

In its Counterclaim, Wilson-Davis alleged that Network's action against Wilson-Davis was brought in bad faith and further alleged that Wilson-Davis is entitled to an award of attorney's fees and costs.

Claimant Network denied any liability with respect to Wilson-Davis' Counterclaim.

RELIEF REQUESTED

Claimant Network requested an award of damages against Wilson-Davis in the amount of \$317,794, plus the \$10,000 losses incurred by virtue of being closed for several days, plus a

minimum of \$670,863 in lost profits associated with the other issues which Network would have completed, plus other incidental losses, costs, and expenses, prejudgment interest, and reasonable attorney's fees.

Respondent Wilson-Davis requested judgment against Network for its costs and attorneys fees incurred in this matter and requested such other relief as the arbitration panel deems proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc. (NASD).

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant Network Capital Corporation are dismissed.

2. Claimant Network Capital Corporation is liable for and shall pay to Respondent Wilson-Davis & Company, Inc. attorney's fees in the amount of \$24,973.46 pursuant to Section 16 of the Fully Disclosed Correspondent Agreement made between the parties in this matter on or about February 21, 1990.

3. Respondent Wilson-Davis & Company, Inc. shall be responsible for filing fees, forum fees and processing fees in this matter, in the amounts described below.

4. The parties shall each bear all other respective costs incurred in this matter.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain Claimant Network Capital Corporation's filing fee in the amount of \$500.00 and shall retain Wilson-Davis & Company, Inc.'s filing fee in the amount of \$500.00. The NASD shall refund Claimant Network Capital Corporation's hearing session deposit in

the amount of \$1,000.00 and shall retain Wilson-Davis & Company, Inc.'s hearing session deposit in the amount of \$600.00. Forum fees shall be assessed against Respondent Wilson-Davis & Company, Inc. in the amount of \$6,000.00, calculated as follows:

One pre-hearing session times \$1,000.00 plus five hearing sessions times \$1,000.00 = \$6,000.00 minus the \$600.00 hearing session deposit = net \$5,400.00 due.

Fees are payable to NASD Regulation, Inc.

OTHER FEES

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Claimant Network Capital Corporation has paid to NASD the \$2,000.00 member surcharge and has paid to NASD processing fees in the amount of \$4,100.00 previously invoiced. Respondent Wilson-Davis & Company, Inc. has paid to NASD the \$2,000.00 member surcharge and has paid to NASD processing fees in the amount of \$600.00 previously invoiced. Respondent Wilson-Davis & Company, Inc. shall pay to NASD the balance of processing fees in the amount of \$3,500.00 previously invoiced. Additionally, Respondent Wilson-Davis & Company, Inc. is liable for and shall pay to Claimant Network Capital Corporation the sum of \$4,600.00 as reimbursement of Network Capital Corporation's filing fee and processing fees in the matter.

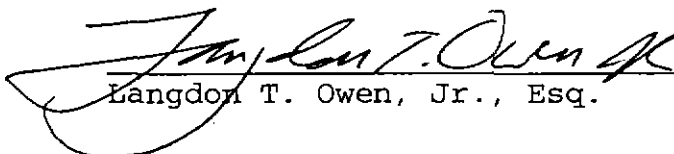
ARBITRATORS

NamePublic / Industry

Langdon T. Owen, Jr., Esq.
A. Robert Thorup, Esq.
Jon C. McKeon

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures

 June 16, 1999
Langdon T. Owen, Jr., Esq.

A. Robert Thorup, Esq.

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Date of Decision: _____

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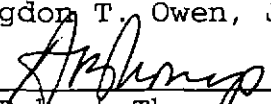
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